



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29022284

Date: JAN. 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a makeup artist, seeks classification as an individual of extraordinary ability in the arts. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), that of 8 C.F.R. § 204.5(h)(3)(iv), related to judging others’ work. On appeal, the Petitioner asserts that she meets four additional evidentiary criteria.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

To fulfill this criterion, the petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.¹

The Petitioner submitted articles about herself and her makeup artistry work, which were written in print media, online versions of print media, and on various media sites, including [REDACTED]. Although the Petitioner attested that she provided all necessary English translations in accordance with 8 C.F.R. § 103.2(b)(3), this is not readily apparent as it relates to the articles provided. Certain details, such as the authors’ names, appear to be absent in the original, but present in the translated English version. [REDACTED] are examples of where this appears to have occurred. In one instance, a date appears in the original version but is not readily apparent in the translation. For instance, the date “17.08.22” appearing in the original of the [REDACTED] printout is not translated.

¹ See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

While we acknowledge that this is likely the date a user printed the article from her computer, it is not conclusive based on the translation provided. The [] printout appears to be in the classified section of the magazine, along with other advertisements, which are not fully translated. As this appears to be self-promotional in nature and about the Petitioner's salon, we cannot conclude that it supports the Petitioner's eligibility under this criterion. The length of the [] article is significantly longer in the original than in the English version and the headings differ between the original and the translation. Similarly, the length of the [] article in the original suggests that the English version is truncated or not fully translated. Because of these translation concerns, the articles carry less probative value.

Many of the photos associated with the news sources lack credits or attributions, even in the original. Here, we have little evidence in the articles themselves that links the Petitioner to the specific photos. In other words, most articles do not indicate that the model in the photo wears makeup the Petitioner applied.

In addition to these issues, we conclude the Petitioner has not sufficiently established that these news sources are professional or major trade publications or other major media. The Petitioner provided letters from the president of the []. The union president states that the February 2011 and September 2015 editions of [] magazine reached 14,000 printed copies; however, the Petitioner has not explained how the number of printed copies of two isolated editions of a magazine establishes that [] is a major medium, nor has the Petitioner explained how 2011 and 2015 figures are relevant when the article about the Petitioner appeared in a 2019 edition.

The union president wrote that circulation of more than 1,000 copies establishes that a magazine is a leading magazine in Armenia. The president also stated that [] is a leading magazine by Armenian standards; however, the president does not explain how being a leading magazine is synonymous with "major media." Furthermore, in response to the Director's request for evidence (RFE), the Petitioner provided evidence that does not support the union president's statements. Specifically, the Mapping Digital Media: Armenia report from 2013 states that a circulation of 2,000 to 6,000 in a printed daily news is "very low." While we acknowledge that [] may not be considered a "daily" publication, the circulation figures cited do not appear to support the union president's conclusion that 1,000 printed copies establishes that a magazine is "leading" in Armenia.

The Mapping Digital Media: Armenia report provides information about the most popular national dailies in 2008-2009; which newspapers had the highest subscription numbers in 2011; how [] increased its web traffic over the course of October 2010 to September 2011; and how [] received more than 125,000 Facebook likes in 2013. While we acknowledge these statistics, none appear to establish that the referenced news sources are "major media" or were at the time the news sources published articles about the Petitioner. Further, the Petitioner has not explained how general web traffic and Facebook likes are akin to circulation figures.

The [] article reports on the history of digital media and internet usage in Armenia. Although the article references [] as a being a pioneer of digital media in the first years of Armenian independence, the Petitioner has not explained how this establishes the "major media" status of [] or the other various news sources that published articles about the Petitioner. The article states, "most newspapers have a circulation of several hundred to several thousand copies." We

acknowledge that [] are not necessarily newspapers; however, such circulation claims again undermine the union president's conclusions that 1,000 printed copies establish a magazine is "leading" in Armenia. Specifically, if most newspapers have a circulation of several hundred to several thousand copies, a circulation of 1,000 copies appears to be very average and not indicative of a "leading" status. Without more context, the [] article is of little probative value in this matter.

The director of [] a company that provides automated media monitoring, wrote that [] has always been in the list of 15 Armenian online media with the largest number of visitors within the last five months" and "[f]or the last five months [] website has constantly been [] within the six most-visited Armenian online media." Even accepting these statements as fact, we cannot conclude that a ranking in the top 15 for web visitors establishes [] status as a major medium or that the number of visits to a [] establishes that it is major media. We agree with the Director's conclusion that web traffic to an internet site is not necessarily comparable to circulation statistics of a print version, nor are user-edited websites necessarily indicative of major media.

While we acknowledge Similar Web statistics and the Yahoo article about Similar Web, neither source sufficiently demonstrates how the media that published articles about the Petitioner are professional or major trade publications or other major media. Statistics such as country rankings, category rankings, and total visits do not in themselves explain or show the significance of the figures.² For instance, high subscription rates may indicate that a news source's subscription is free rather than paid. Without more context, rankings alone do not indicate that a medium has major status or standing. While Similar Web can offer a greater understanding of online behavior, it is not necessarily comparable to circulation statistics.

For the foregoing reasons, we conclude the Petitioner does not meet this criterion.

Evidence of the individual's *original scientific, scholarly, artistic, athletic, or business-* related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.³

The Petitioner submitted recommendation letters, awards, diplomas, and certificates for our consideration under this criterion. The Director concluded:

The letters commend you and speak highly of your skillset, membership, makeup, work collaborations, and the work you have performed in the field; however, the letters do

² See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

³ See *Visinscaia*, 4 F. Supp. 3d 126 at 134.

not demonstrate that you[r] contributions were both original and of major significance in the field. . . You did not submit independent, objective evidence that your contributions are “original” and have significantly influenced the field—reaching far beyond your employer(s) and customers/clients.

We agree with the Director’s conclusions about the recommendation letters. For instance, [] wrote that the Petitioner has a “unique technique” for smoky eyes and contouring; however, Ms. [] does not explain the technique, nor does she suggest that the Petitioner originated the smoky eye or contouring makeup trend. Other documents contain assertions, including that the Petitioner “invented a unique style in makeup,” “introduced innovations,” and has a “unique approach” and a “unique program for teaching makeup.” While we acknowledge these statements, most authors do not explain what the unique technique, approach, program, or innovation is; how it is attributable to the Petitioner; or how it affected the field.

Two letters explain that false eyelashes were financially unaffordable for most people in Armenia but that the Petitioner utilized an eyeliner technique obviating the need for false eyelashes. However, the authors of such letters do not sufficiently support their conclusions that eyeliner, even winged eyeliner, is an original idea or that the Petitioner invented it, nor do they explain the Petitioner’s technique with detail sufficient to differentiate her technique from other eyeliner techniques. Another letter claims the Petitioner was the first to make makeup an art; however, there is little explanation in the letter to support this claim, nor is there independent and objective evidence in the record to substantiate it. If the Petitioner were the first to make makeup an art, this would then appear to suggest that the Petitioner engendered the term “makeup artist;” however, it is common knowledge that the term “makeup artist” long predates any specific person’s work. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field add value.⁴ On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.⁵ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Here, the letters’ authors offer general and conclusory statements that have little foundation or evidentiary support. As such, they are not probative of the Petitioner’s eligibility under this criterion.

Although the recommendation letters are juxtaposed with photos of models wearing makeup, there are few credits or attributions attached to the photos within the articles themselves to establish the Petitioner as the models’ makeup artist. Many photos appear to come from [] magazine, but we cannot determine how these and other photos are contributions to the field of makeup artistry. Similarly, the Petitioner provided photos from a flower and gift shop, [], and a letter explaining that she provided the makeup for the models in their 2019 [] event. The Petitioner has not explained how the makeup provided for the models in this event is a contribution to the field of makeup artistry.

The Petitioner provided evidence that she collaborated with a hairstylist for [] hair competitions and that her collaborator, [], won a best photo

⁴ See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁵ *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

award for his hairstyle. Mr. [] attributes his win partly to the Petitioner for creating makeup that complemented the hairstyle and was unique, but neither the award, nor the [] publicity surrounding it, mentions the Petitioner or her makeup. While such an award may be notable in photography, the Petitioner has not provided evidence that she received an award, that award is in the field of makeup artistry, or that her work was an original contribution. Even if she had, the Petitioner would still need to establish how winning such an award is of major significance to her field. Although a model's makeup may be creative and customized, this does not necessarily establish its originality or significance in the field.

The Petitioner also received certificates of participation in various beauty events, as well as a certificate of gratitude from Armenia's tourism department. While these awards and certificates establish her ongoing work in the field, the Petitioner has not provided sufficient evidence to establish how they constitute original contributions that have been majorly significant to the makeup industry.

Because the Petitioner has not established that her personal achievements are original contributions which have been of major significance to the field of makeup artistry or the beauty industry, we conclude that she does not meet this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The petitioner must establish that she has performed in a leading or critical role. For a "leading" role, we consider evidence establishing that a petitioner is (or was) a leader within the organization or establishment.⁶ For a "critical" role, we look to evidence that establishes a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.⁷ To satisfy this criterion, the Petitioner relied upon photos, recommendation letters, and documents evidencing that she owns and operates her own makeup studio in Armenia, among other pieces of evidence.

[] magazine appears to have published many of the photos the Petitioner provided for our consideration; however, we cannot determine how these photos establish the Petitioner has performed in a leading or critical role for []. For instance, the photos and accompanying documents do not suggest that the Petitioner is a staff makeup artist for [] or that she is the only makeup artist to work with [] nor can we isolate the makeup as the leading or critical piece of the photos or magazine.

In the initial filing, the 2019 [] event appeared to be a promotional campaign for the [] shop. Nothing in the photographs or event promotional materials reference the Petitioner or her work. The focus of the event appears to be on the flowers, while the makeup is neutral and similar across all of the models. It is not apparent from the record whether the Petitioner served as an employee of [] for this specific event or in some other capacity. Accordingly, even if we were to conclude that [] shop has a distinguished reputation, the

⁶ See generally USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

⁷ *Id.*

Petitioner's evidence of her role with the shop or within the [] event would be insufficient to establish her eligibility under this criterion.

While opera singers, television presenters, and plastic surgeons may use the Petitioner's services, the Petitioner has not explained how this establishes her eligibility under this criterion. These authors respect the Petitioner and compliment the work she performed for them; however, their letters do not sufficiently explain how her role as their personal makeup artist is leading or critical, nor does the Petitioner explain how individual clients, even famous ones, constitute "organizations or establishments." Similarly, a business' appreciation of the Petitioner's services does not necessarily establish the Petitioner performed in a leading or critical role for the business. Even if an opera singer performing in the national theater or philharmonic utilized the Petitioner's makeup services, the evidence does not demonstrate the Petitioner is the only makeup artist the opera singer uses, that the theater or philharmonic credits the Petitioner's work in their productions, or that the Petitioner is mentioned as part of the theater or philharmonic's creative team. As such, the evidence is insufficient to demonstrate the nature of her role, let alone that it is leading or critical.

The Petitioner submitted evidence that she owns and operates her own makeup studio. While we agree that her role for her own business may be leading or critical, the Petitioner has not established that her studio has a distinguished reputation. The evidence suggests the Armenian tourism department gave the Petitioner's studio a gratitude certificate; however, neither the certificate nor the accompanying documents explain why or how this confers a distinguished reputation upon the Petitioner's studio. Based upon the evidence provided, the gratitude certificate could have been awarded for volunteer work performed or money donated to the philharmonic and have little relation to or bearing upon her studio's reputation. Similarly, the studio's Instagram and Facebook page, as well as photos of her trainees with their certificates, do not establish the studio's distinguished reputation, particularly as the Petitioner created most of this content herself. Positive social media reviews and her student trainees' subsequent success may establish the popularity or quality of the Petitioner's services; however, this is insufficient to establish that opinions about the studio are widespread and indicative of distinguishment.

As the foregoing analysis demonstrates, the Petitioner has not established she satisfies this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii)

Although the Petitioner asserts eligibility under this criterion, we need not discuss it. In the initial filing, the Petitioner asserted her eligibility under five of ten criteria. The Director determined the Petitioner satisfied eligibility under one of those five. On appeal, the Petitioner reasserts her eligibility under that criterion as well as the other four criteria under which she initially asserted eligibility. We analyzed three of these four criteria and determined the Petitioner has not established eligibility under them. As such, we need not analyze the remaining criterion. Even if the Petitioner established eligibility under 8 C.F.R. § 204.5(h)(3)(vii), relating to artistic showcases, she would not be able to establish that she meets at least three of the ten criteria required for this visa classification. As the

Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the issue of her eligibility under the artistic showcase criterion.⁸

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that establish she meets at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

⁸ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).